

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE COLUMBIA UNIVERSITY
PATENT LITIGATION

MDL No. 1592 (MLW)
1:04-CV-11546 (MLW)

**REPORT OF GENENTECH, INC. PURSUANT TO
THE COURT'S ORDER OF NOVEMBER 5, 2004**

Pursuant to the Court's Memorandum and Order dated November 5, 2004 ("November 5 Order"), plaintiff Genentech, Inc. ("Genentech") respectfully submits this report. Genentech has conferred with defendant The Trustees of Columbia University in the City of New York ("Columbia") regarding the matters in this report. Columbia has indicated that it will state its positions in a report filed separately.

This report is limited to Genentech, Inc. v. Trustees of Columbia University in the City of New York, Case No. 1:04-cv-11546, and does not address any of the other cases consolidated into the multidistrict litigation, In re Columbia University Patent Litigation, Case No. MDL 1592.

A. Dismissal of Claims Listed in the Proposed Order

Genentech agrees that the four claims listed in the Court's [Proposed] Order—specifically, Genentech's First, Second, Third, and Fourth Claims for Relief—should be dismissed pursuant to the Court's November 5 Order. Genentech's agreement that the Fourth Claim is subject to dismissal is based upon Columbia's December 2, 2004 representation that it will refund Genentech the payment of \$137,430 of royalties made in connection with the '275 patent. To date, no such refund has occurred.

B. Identification of Cases that Should Be Dismissed Completely

Genentech's position is that its case, Genentech v. Columbia, Case No. 04-11546, should not be dismissed completely.

Genentech takes no position with regard to whether any case in which Genentech is not a party should be dismissed completely.

C. Identification of Remaining Cases and Counts

Genentech's Fifth Claim for Relief, for Breach of Contract, in Genentech v. Columbia, Case No. 04-11546 remains.

Genentech takes no position with regard to counts remaining in other cases in which it is not a party.

D. & E. Settlement and Stay

Genentech and Columbia have engaged in settlement talks but are currently at an impasse. Genentech believes that additional time may prove fruitful in resolving the parties' differences and requests that a stay be entered with regard to Genentech's Fifth claim for relief, with a report on the status of negotiations due in 120 days.

F. Schedule

Genentech requests that this matter be stayed for 120 days. Genentech further requests that a joint report be submitted in 120 days if this case is not resolved by that time.

DATED: December 6, 2004

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